

KNOW YOUR RIGHTS

HOLDOVER CASES

1. What is a Holdover Case?

A holdover case is brought by a landlord to evict a tenant or the person in the apartment for reasons other than simple non-payment of rent. A holdover case is much more complicated than a non-payment case. The information given below is very general and there can be a number of differences in individual cases. Therefore, the help of a lawyer is especially important in holdover cases.

2. What legal papers should I have received before going to court?

- **Notice to cure** - *The landlord is usually, but not always, required to give you a written “notice to cure.” This notice will tell you how the landlord thinks you are breaking your lease or acting in a way that is not appropriate for a tenant. It gives you a chance to correct the problem before a case begins.*
- **Notice of termination** - *Before court papers are delivered to you, the landlord must in almost all cases also give you a written “notice of*

termination.” If you have received a notice to cure, you will likely receive the notice of termination about ten days later. This notice must give you details regarding how the landlord believes you broke your lease or regarding any other behavior for which the landlord is trying to end or terminate your lease. The notice must also tell you that you must be out of your apartment by a specific date or that the landlord will take you to court to evict you.

- **Notice to quit** - *If the landlord was not required to give you a notice to cure or a notice of termination, you may simply receive a notice which tells you that you must be out of the apartment by a specific date (usually ten days after the notice is delivered to you). This notice, sometimes called a “Notice to Quit,” may explain why the landlord believes that you do not have any right to stay in the apartment.*
- **Holdover petition and notice of petition** - *After the date listed in the notice of termination or notice to quit by which the landlord wants you out of your apartment, you must be given court papers called the “holdover petition” and “notice of petition” to bring you to court.*

3. What should I do after receiving the holdover petition?

The holdover petition will tell you the

court address, the courtroom number (also usually referred to as “Part” with a letter of the alphabet after it), and the date and time to show up at Housing Court, usually within two weeks of the date you received the court papers. You must be in court on your court date and on time. You should be there early enough to get through security at the entrance to the courthouse and to find the courtroom and get a seat.

4. How should I answer the holdover petition?

Holdover cases are far more complicated than nonpayment cases. The first thing you should do is see if you can get an attorney.

The simplest way to answer is in person with the help of the Landlord-Tenant Clerk. If you have questions about how to answer the petition or about what will happen on your court date, you can go to the “Resource Center” in the Housing Court in each borough.

5. What should I say in my answer?

You can defend yourself against the holdover petition by showing any of the following (NOTE that this is not a complete list of all possible defenses):

- *What the landlord claims you did or did not do is not true, or is not as serious as the landlord claims it is.*

- *The notice to cure or notice of termination does not contain enough specific information to allow you to defend against the landlord's case.*
- *One or more of the forms was not given to you properly.*
- *The landlord accepted rent from you AFTER the date listed in the notice of termination AND before you were served with the notice of petition and holdover petition.*
- *The landlord is suing to "get even" because you recently complained to a government agency or joined a tenants' association.*
- *The notice to cure or notice of termination was not signed by the landlord or an authorized agent.*
- *Even though you did not have a lease in your name, you are a family member of the prior tenant and lived with that tenant before he or she left the apartment.*
- *The apartment you live in is an illegal apartment.*

6. What happens during the trial of a holdover cases?

If the Judge finds that the landlord has proven his or her case, that is, that you have broken important terms of your lease or that the other reasons stated by the landlord for evicting you are serious, you may be given time to correct the problem. If you correct the problem within the amount of time the Judge

gives you (usually ten days), the case is over and you can remain in your apartment. If you do not correct the problem within the time given or if the law does not give you time to correct a problem after trial, the Judge may order you to move out of your apartment. In most cases, the Judge has the power to give you up to six months to move if you pay a fair "use and occupancy" (usually the rent amount) during that time.

As described above, during the time that you stay in the apartment, you will probably be ordered to pay rent, but now it is called "use and occupancy" or "U & O." It will usually be the same amount as your rent was. The Judge may allow the landlord to evict you if the "U & O" is not paid on time.

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MAKING THE CASE FOR HUMANITY

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